

CCRB INVESTIGATIVE RECOMMENDATION

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|--|--|---------------------------|---|---|---------------------------------|
| Investigator: Peter Hoy (S7) | Team: Team # 6 | CCRB Case #: 201200149 | <input type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 01/04/2012 12:05 PM | Location of Incident: West Burnside Avenue and Loring Place | Precinct: 46 | 18 Mo. SOL 7/4/2013 | EO SOL 7/4/2013 | |
| Date/Time CV Reported Wed, 01/04/2012 4:25 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Wed, 01/04/2012 4:25 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |

| Witness(es) | Home Address |
|-------------|--------------|
| [REDACTED] | [REDACTED] |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. POM Elisha Duncan | 03073 | 926793 | 046 PCT |
| 2. SGT Francis Bryant | 00370 | 927980 | 046 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|--|-----------------------------|
| A.POM Elisha Duncan | Discourtesy: PO Elisha Duncan spoke obscenely and/or rudely to § 87(2)(b) [REDACTED] | [REDACTED] |
| B.POM Elisha Duncan | Abuse: PO Elisha Duncan threatened to arrest An individual. | [REDACTED] |
| C.SGT Francis Bryant | Abuse: Sgt. Francis Bryant seized § 87(2)(b) [REDACTED] s property. | [REDACTED] |

Case Summary

On January 4, 2012, § 87(2)(b) filed a complaint by telephone with the Civilian Complaint Review Board (encl. 3A-B). Earlier the same day, at 12:05 p.m., § 87(2)(b) and his friend § 87(2)(b) were in § 87(2)(b)'s vehicle, stopped near the intersection of West Burnside Avenue and Loring Place in the Bronx when they were approached by two officers, identified as PO Elisha Duncan and Sgt. Francis Bryant from the 46th Precinct. The following allegations resulted:

- **Allegation A – Discourtesy: PO Elisha Duncan spoke obscenely and/or rudely to** § 87(2)(b) § 87(2)(g)
- **Allegation B – Abuse of Authority: PO Elisha Duncan threatened to arrest An individual.** § 87(2)(b) (g)
- **Allegation C – Abuse of Authority: Sgt. Francis Bryant seized** § 87(2)(b)'s property. § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

On February 1, 2012, § 87(2)(b) was interviewed at the CCRB (encl. 3D-F) § 87(2)(g)

On January 4, 2012, at approximately 12:00 p.m., § 87(2)(b) and his friend § 87(2)(b) were driving on West Burnside Avenue near Loring Place in the Bronx. His vehicle has illegally tinted windows. He made a U-turn and stopped near a bus stop to drop off § 87(2)(b). He may have stopped his car in the bus stop. An unmarked vehicle pulled behind them and PO Duncan and Sgt. Bryant exited. PO Duncan approached the driver's side and Sgt. Bryant approached the passenger's side. PO Duncan screamed, "Shut off the fucking car. Shut off the fucking car." PO Duncan opened the driver's side door, pulled § 87(2)(b) out of the vehicle by his left arm and said, "I'll decide when you're fucking good." Sgt. Bryant took § 87(2)(b) out of the vehicle.

PO Duncan escorted § 87(2)(b) to the rear of the vehicle, pushed his face against the rear window and handcuffed him. When § 87(2)(b) asked why he was being arrested, PO Duncan said, "For whatever the fuck I want to arrest you for." PO Duncan then told him he was being arrested for making an illegal U-turn, having illegally tinted car windows and for parking in a bus stop. During the incident, PO Duncan told § 87(2)(b) "Don't tell me how to do my fucking job," and, "I keep fucking telling you, refer to me as 'officer.'"

During the incident, a man named § 87(2)(b) whose last name is unknown, walked by. § 87(2)(b) said § 87(2)(b) works in the neighborhood as is known as "§ 87(2)(b)". He described him as an elderly Hispanic male. § 87(2)(b) asked § 87(2)(b) what was going on, prompting PO Duncan

to tell § 87(2)(b) “Keep on moving before you get arrested, too.”

The officers released § 87(2)(b)'s vehicle to § 87(2)(b) and brought § 87(2)(b) to the stationhouse. § 87(2)(b) was released from the stationhouse with a disorderly conduct summons.

During the stop, the officers had taken a PBA card from § 87(2)(b)'s wallet, and at the stationhouse he asked the officers about having the card returned to him. One of the officers asked § 87(2)(b) if the officer who gave him the PBA card was a blood relative and § 87(2)(b) explained that the officer was not. Sgt. Bryant told PO Duncan, “Hurry up and get him the fuck out of here,” and, “Fuck his card. Let the officer come get his card. Let the officer know that I’m his boss.”

Statements Made during Field Work

On April 19, 2012, the undersigned conducted field work at the incident location. A man at the location identified himself as § 87(2)(b) and stated that he lives in the neighborhood; however, he refused to provide additional identifying or contact information. § 87(2)(b) refused to provide a sworn statement, but said that on the incident date, he was in the Dominican Republic.

Attempts to Contact Civilians

No statement was taken from § 87(2)(b) who was deemed unavailable by the investigation. § 87(2)(b) provided a telephone number for § 87(2)(b) but denied knowing his address. Searches of the Whites Pages and LexisNexis directories yielded no results for an address for § 87(2)(b). Between February 3, 2012, and March 12, 2012, the undersigned called § 87(2)(b) five times, left three voice messages, left one message with a man who identified himself as § 87(2)(b) cousin, and was hung up once after identifying himself as a CCRB investigator. Periodic searches of the New York City Department of Correction website yielded no results for incarcerated individuals named § 87(2)(b).

NYPD Statements:

Subject Officer: PO ELISHA DUNCAN

- § 87(2)(b) years old on the date of incident, PO Duncan is a black male, stands five feet and six inches, weighs 180 pounds and has black hair and brown eyes.
- On January 4, 2012, PO Duncan worked from 9:30 a.m. to 6:05 p.m., in uniform and assigned to conditions in an unmarked vehicle with Sgt. Francis Bryant.

Summons

On January 4, 2012, at 12:10 p.m., PO Duncan issued summons § 87(2)(b) (encl. 4A) to § 87(2)(b) for § 87(2)(b), at West Burnside Avenue and Loring Place.

Memo Book

PO Duncan made the following memo book entries related to this incident (encl. 4B-C): At 12:05 p.m., one male stopped at Long Place and West Burnside Avenue. At 12:10 p.m., one under arrest for § 87(2)(b).

CCRB Testimony

On May 30, 2012, PO Duncan was interviewed at the CCRB (encl. 4D-E). His statement is summarized below.

At the time and place of occurrence, PO Duncan observed § 87(2)(b) parked at a bus stop. PO Duncan and Sgt. Bryant approached § 87(2)(b)'s vehicle and PO Duncan asked § 87(2)(b) what he was doing at the location, if the vehicle was his and if he was waiting for somebody. § 87(2)(b) became upset, yelled and cursed at PO Duncan, stating, “I know the fucking police commissioner.” PO Duncan told § 87(2)(b) to stop cursing and yelling, but § 87(2)(b)

continued. PO Duncan asked § 87(2)(b) for his license and registration, but § 87(2)(b) refused to provide them. PO Duncan told § 87(2)(b) to exit the vehicle and told him he was being placed under arrest for disorderly conduct. § 87(2)(b) exited the vehicle and PO Duncan handcuffed § 87(2)(b) without using any force. PO Duncan brought § 87(2)(b) to the stationhouse, but released him with a summons for § 87(2)(b).

PO Duncan did not use any profanity or say, “Shut off the fucking car;” “I’ll decide when you’re fucking good;” “For whatever the fuck I want to arrest you for;” “Don’t tell me how to do my fucking job;” or, “I keep fucking telling you, refer to me as officer.”

There were a lot of people around at the time of the incident, but PO Duncan did not recall anyone stopping or becoming involved. PO Duncan did not threaten to arrest anyone.

Subject Officer: SGT. FRANCIS BRYANT

- § 87(2)(b) years old on the date of incident, Sgt. Bryant is a black male, stands six feet and three inches tall, weighs 225 pounds, is bald and has brown eyes.
- On January 4, 2012, Sgt. Bryant worked from 9:30 a.m. to 6:12 p.m., in uniform and assigned to conditions in an unmarked vehicle with PO Elisha Duncan.

Memo Book

Sgt. Bryant made the following memo book entries related to this incident (encl. 4F-H): At 12:10 p.m., PO Duncan, car stop and § 87(2)(b) summons.

CCRB Testimony

On May 17, 2012, Sgt. Bryant was interviewed at the CCRB (encl. 4I-J). Despite being prompted with details of the incident and being shown the summons related to the incident, Sgt. Bryant said he did not recall the incident. Sgt. Bryant denied hearing PO Duncan use profanity or threaten to arrest anyone.

Summons/Arrest for Incident and Disposition

- § 87(2)(b), § 87(2)(c)

Status of Civil Proceedings

- As of July 10, 2012, § 87(2)(b) has not filed a Notice of Claim with the City of New York with regard to the incident (encl. 9D).

Civilian Criminal History

- § 87(2)(b), § 87(2)(c)

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 1E).

Subject Officer CCRB History

- PO Duncan has been a member of the service for 11 years and there has been one substantiated CCRB allegation against him (encl. 2A-C):
 - In CCRB case number 200910870, an allegation was substantiated that PO Duncan spoke rudely and/or discourteously to an individual. PO Elisha Duncan received instruction from the NYPD as a result.

- Sgt. Francis Bryant has been a member of the service for 11 years and there have been two substantiated CCRB allegation against him (encl. 2D-E):
 - In CCRB case 200910870, an allegation that Sgt. Bryant stopped an individual was substantiated. Sgt. Bryant received instructions from the NYPD as a result.
 - In CCRB case 201103380, an allegation that Sgt. Bryant supervised the questioning of an individual was substantiated. The CCRB recommended charges as a result.

Conclusion

Identification of Subject Officers

PO Duncan acknowledged his role in the incident, which matched the actions of the officer who allegedly cursed at § 87(2)(b) and threatened to arrest the individual named “§ 87(2)(b) § 87(2)(g) § 87(2)(b) § 87(2)(b) said he did not know which officer took his PBA card and could not recall which officer he asked about getting it back; however, he said he heard Sgt. Bryant instruct PO Duncan not to return the card to § 87(2)(b) § 87(2)(g)

Investigative Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(b) admitted having illegally tinted windows and admitted he may have illegally parked in the bus stop. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) said that during his arrest, PO Duncan pulled him from his vehicle and pushed him against his car. § 87(2)(g)

Allegation A – Discourtesy: PO Elisha Duncan spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) alleged that PO Duncan told him, “Shut off the fucking car,” “I’ll decide when you’re fucking good,” “For whatever the fuck I want to arrest you for,” “Don’t tell me how to do my fucking job,” and, “I keep fucking telling you, refer to me as ‘officer.’” PO Duncan denied making these remarks. Sgt. Bryant did not recall the incident. No testimony was obtained from § 87(2)(b) or § 87(2)(b) § 87(2)(g)

Allegation B – Abuse of Authority: PO Elisha Duncan threatened to arrest An individual.

§ 87(2)(b) alleged that PO Duncan threatened to arrest a man named § 87(2)(b). § 87(2)(b) did not cooperate with the investigation or provide a sworn statement, but he said he was out of the country on the date of the incident. PO Duncan denied making this threat and Sgt. Bryant denied hearing PO Duncan threaten to arrest anyone. § 87(2)(b) was not available to provide a statement.

§ 87(2)(g)

Allegation C – Abuse of Authority: Sgt. Francis Bryant seized § 87(2)(b)s property.

§ 87(2)(b) alleged that Sgt. Bryant refused to return his PBA card to him. PO Duncan did not recall that § 87(2)(b) had a PBA card and Sgt. Bryant denied any recollection of the incident.

As noted in the 2008 CCRB Annual Report (encl. 1), police union courtesy cards are property of the Patrolmen's Benevolent Association and are subject to revocation upon demand by any law enforcement officer. § 87(2)(g)

Team: 5

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| Investigator: | _____ Signature | _____ Print | _____ Date |
| Supervisor: | _____ Title/Signature | _____ Print | _____ Date |
| Reviewer: | _____ Title/Signature | _____ Print | _____ Date |
| Reviewer: | _____ Title/Signature | _____ Print | _____ Date |